Supreme Court, U.S.
FILED
AUG 30 1995
OFFICE OF THE CLERK

No. 95-350

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JEFFREY R. WUNDERLICH,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition for Writ of Certiorari to the
Appellate Court of Illinois,
Fourth District

PETITION FOR WRIT OF CERTIORARI

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37 pp

(1a) QUESTION PRESENTED

1. Is the Fourth Amendment (as encompassed by Fourteenth Amendment due process of law) violated where probable cause can be found only via the objectively unreasonable, subjective belief of the arresting officer that an offense is being committed?

(1b) PARTIES INVOLVED (per Rule 21.1(b)]

Petitioner, Jeffrey R. Wunderlich, was the defendant in the Circuit Court of McLean County, Illinois, appellant in the Appellate Court of Illinois, Fourth Judicial District and petitioner in the Supreme Court of Illinois.

Respondent, People of the State of Illinois, was the plaintiff in the Circuit Court, appellee in the Appellate Court of Illinois, Fourth Judicial District, and respondent in the Supreme Court of Illinois.

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subjective belief is entertained in good faith. The Illinois Court's holding to the contrary does violence to principles of this Court requiring an "objectively reasonable" standard for probable cause as adopted in United States v. Leon, 468 U.S. 897, 82 L.Ed.2d 677 (1984). 14

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(1d) Judgment Below

The Order of the Appellate Court of Illinois, Fourth Judicial District, No. 4-94-0401, not reported, is attached as Appendix A to this Petition.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JEFFREY R. WUNDERLICH,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition for Writ of Certiorari to the Appellate Court of Illinois, Fourth District

Petitioner, Jeffrey R. Wunderlich, (hereafter, defendant), prays that a Writ of Certiorari issue to review the judgment of the Appellate Court of Illinois, Fourth Judicial District, affirming the judgment (conviction and sentence) of the Circuit Court of McLean County, Illinois.

Defendant was convicted of driving

while his license was revoked, and sentenced to 5½ years in prison.

Judgment and Opinion Below

The Order of the Appellate Court of Illinois, Fourth Judicial District, affirming the Circuit Court's judgment, is set out as App. A. The order is not reported.

Jurisdictional Statement

On December 6, 1994, the Appellate Court of Illinois, Fourth Judicial District, filed its Order (App. A) affirming the judgment of the Circuit Court. Petition for rehearing was denied on February 2, 1995. (App. B) Petition for Leave to Appeal to the Supreme Court of Illinois, No. 78749, was denied on June 1, 1995. (App. C)

This Petition for Certiorari is timely filed within 90 days thereafter.

Jurisdiction is invoked under 28 U.S.C. § 1257(a) and Rules 10.1, 12.1, and 13.1 of this Court.

Constitutional Provisions

The Fourth Amendment to the United States Constitution provides:

"THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

"Section 1. . . . NO STATE SHALL . . . DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; . . ."

STATEMENT OF THE CASE

Defendant was convicted of driving with a revoked license. The only basis for stopping the car he was driving, was the arresting officer's belief that defendant was violating an Illinois statute that prohibits driving with a materially obstructed windshield. Defendant's motion to quash and suppress - asserting a 4th Amendment violation, in that there was no objectively reasonable basis for finding probable cause - was denied.

PREFATORY STATEMENT:

There was no dispute that defendant was driving, or that his license was revoked.

The information as to defendant's identity, and that he was driving on a

revoked license, was obtained only because of the traffic stop. (Tr. 8-9; 10; 13-14; 25-26[1]) Therefore, had defendant's Motion to Quash been allowed, the State would not have been able to proceed with the prosecution; for if the "traffic stop" was held unconstitutional, then its fruits would have to be suppressed.

FACTS *RE* MOTION TO SUPPRESS:

Defendant filed a Motion to Quash Arrest and To Dismiss (R. 34-38), that included, as Exhibit A (R. 38), a copy of a photograph of the bandanna at

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[1] The Two-Volume Record is indicated herein as follows: Vol. I, Common-Law Record, pp. 1-80, referred to as "R."; and Vol. II, Transcript of Proceedings, pp. 1-60, containing Hearing on Motion to Quash and Bench Trial, 2/28/94 (pp. 2-29), and Sentencing, 3/28/94 (pp. 30-59), referred to as "Tr."

issue, hanging from the rear view mirror. (A copy of the photo is included as App. D to this Petition.)

At the hearing on the Motion, defendant testified that when he was stopped by an Illinois State Police Officer on August 17, 1992, around 4:30 p.m., he was driving on highway I-55; that he was violating no law; that the car (an older model, full-sized Chrysler that belonged to his girlfriend) had no equipment violations; and that there was no warrant for his arrest. (Tr. 2-4) He further testified that the bandanna hanging from the rear view mirror did not obstruct his vision; that he was able to see the road and oncoming traffic perfectly. (Tr. 16) He identified Def. Ex. 1 (R. 38) as a copy

of a photo accurately depicting how the bandanna appeared (Tr. 15-16), which characterization the Officer did not dispute. (See Tr. 12.) The copy of the photo, Def. Ex. 1, was admitted in evidence. (Tr. 16)

The only reason for the traffic stop was the Officer's observation of a bandanna hanging from the rear view mirror of the car defendant was driving. (Tr. 8-9; 10; 13-14) Officer Dodge testified that "The bandana [*sic.*[2]] was like rolled in a fashion that you would wear on your head, you know, that people

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[2] Throughout the Transcript, the court reporter spells the word "bandana"; our WordPerfect 5.1 "spellcheck" reflects the correct spelling is "bandanna." Hereafter, we continue to spell it "bandanna" except when quoting from the Transcript, where we use the reporter's spelling without further indicating "*sic.*"

roll them up and put on their heads." (Tr. 11) The Officer's view was looking through the back window of the sedan. (Tr. 9) When asked whether, as he looked through the back window of the sedan defendant was driving, the bandanna hanging from the mirror blocked his view of the road ahead, the Officer replied, "The width of the bandana did block some of the road, yes." (Tr. 9)

The Officer could not estimate the thickness of the rolled up bandanna at its thickest point, whether it was more or less than an inch.[3] (Tr. 12-13)

According to the Officer's interpretation of the statute respecting obstructed vision, there is no

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[3] We refer Your Honors to the photograph. (R. 38; App. D)

requirement, for there to be a violation of the statute, that there be a **material** obstruction of the driver's vision:

> "Well, my understanding and knowledge, what I have been told through my attending both academies and Police Training Institute, is that the **objects are not supposed to be suspended or hanging on that windshield or in between the driver or the windshield**, and that's my knowledge. So if you are asking me if that would be a violation with the religious artifact, a rosary or what have you, yes, to my knowledge." (Tr. 13) (Emphasis added.)

The court denied defendant's Motion to Quash, (Tr. 21), which ruling the Appellate Court affirmed. (Order, App. A)

The court found (Tr. 21), and the Appellate Court approved the finding, (Order, App. A), that the bandanna "does constitute a material

obstruction," (Tr. 21), and therefore, that the Officer had probable cause to make the stop on that basis.

The statute in question, 625 ILCS 5/12-503,[4] entitled **"Windshields must be unobstructed and equipped with wipers,"** provides in subsection (c), as follows:

> "No person shall drive a motor vehicle with any **objects placed or suspended between the driver and the front windshield**, rear window, side wings or side windows immediately adjacent to each side of the driver **which materially obstructs the driver's view.**" (Emphases added.)

FACTS *RE* OFFENSE:

After the Motion to Quash was denied, (Tr. 21), defendant's bench

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[4] Formerly Ill.Rev.Stat. 1991, ch. 95½, ¶ 12-503.

trial proceeded, (Tr. 22-28), and - there being no dispute as to the elements of the offense - the court found him guilty of driving while his license was revoked. (Tr. 28)

FACTS *RE* POST-TRIAL MOTION:

Defendant filed a written post-trial motion renewing the issue of the legality of the stop. (R. 50) The court denied the motion, stating:

> "The Court, of course, did not see that bandana, but we did have pictures of the bandana which were, which was marked as People's [*sic.*[5]] Exhibit Number One, and admitted into evidence, and it is my opinion that a rolled bandana hanging from a rearview mirror for three-quarters the distance from the mirror to the bottom of the windshild [*sic.*] does

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[5] The court misspoke here, as the photo depicting the bandanna was not a People's Exhibit, but was Defendant's Exhibit No. 1. (See Tr. 15-16.)

> constitutes a material obstruction, and that the officer did have, at least, probable cause, based on that, to make a stop, and therefore, I am going to deny the post trial motion." (Tr. 34-35)

RAISING THE FEDERAL QUESTION BELOW

Defendant moved to quash on 4th Amendment grounds. (R. 34-38) The court held there was probable cause based on the officer's belief that defendant was violating the statute prohibiting driving with materially obstructed view through the windshield. (Tr. 21) Defendant raised the issue via post-trial motion, (R. 50), which the trial court denied. (Tr. 34-35)

The 4th Amendment issue was raised in the Appellate Court, which affirmed. (App. A) The issue was raised again on rehearing, which was denied. (App. B)

The Petition for Leave to Appeal

raised the same constitutional issue; the Illinois Supreme Court denied leave to appeal. (App. C)

REASONS FOR GRANTING CERTIORARI

1. The Fourth Amendment requires application of an "objectively reasonable" standard in determining whether there is probable cause, rather than use of the subjective belief of an individual officer that is objectively unreasonable - even if the said objective belief is entertained in good faith. The Illinois Court's holding to the contrary does violence to principles of this Court requiring an "objectively reasonable" standard for probable cause as adopted in United States v. Leon, 468 U.S. 897, 82 L.Ed.2d 677 (1984).

Here, the arresting officer testified that according to his understanding of the "obstructed windshield" statute, a person would be in violation of that law if he drove with a rosary hanging from the rearview mirror. (Tr. 13) This is clearly wrong.

The statute in question, 625 ILCS

5/12-503, entitled "**Windshields must be unobstructed and equipped with wipers,**" provides in subsection (c), as follows:

> "No person shall drive a motor vehicle with any **objects placed or suspended between the driver and the front windshield**, rear window, side wings or side windows immediately adjacent to each side of the driver **which materially obstructs the driver's view.**" (Emphases added.)

According to the Officer's interpretation of the statute respecting obstructed vision, there is no requirement, for there to be a violation of the statute, that there be a **material** obstruction of the driver's vision:

> "Well, my understanding and knowledge, what I have been told through my attending both academies and Police Training Institute, is that the **objects are not supposed to be suspended or hanging on that windshield or in between the driver or the**

> **windshield**, and that's my knowledge. So if you are asking me if that would be a violation with the religious artifact, a rosary or what have you, yes, to my knowledge." (Tr. 13) (Emphasis added.)

This interpretation of the statute is clearly wrong, and the officer's arrest of defendant for violating the statute based on that wrong interpretation is objectively unreasonable. Therefore, despite that the officer may have acted in good faith, his objectively unreasonable subjective belief is not sufficient to amount to probable cause.

The Illinois Court's holding to the contrary (App. A), violates this Court's "objectively reasonable" standard for probable cause determinations as adopted in United States v. Leon, 468 U.S. 897,

82 L.Ed.2d 677 (1984). "We emphasize that the standard of reasonableness we adopt is an objective one." Id. at 919 n.20, 82 L.Ed.2d at 696, n.20.

Indeed, the officer in the case at bar did not have "a reasonable knowledge of what the law prohibits," which is prerequisite to Leon's standard of objective reasonableness. Ibid., citing United States v. Peltier, 422 U.S. 531, 542, 45 L.Ed.2d 374 (1975).

Unless certiorari is granted and this Court clarifies that objective reasonableness is the touchstone in this situation, citizens will have their 4th Amendment rights violated by officers whose subjective belief, no matter how much in good faith, is objectively unreasonable. This, in turn, will lead

to the very kind of lawlessness by law enforcement that brings the entire judicial system into disrepute.

This Court held in Mapp v. Ohio, 367 U.S. 643, 6 L.Ed.2d 1081 (1961), that the exclusionary rule is a requirement of the 4th and 14th Amendments to the U.S. Constitution.

In the words of Mr. Justice Clark, speaking for a majority of this Court in Mapp v. Ohio:

> "There are those who say, as did Justice (then Judge) Cardozo, that under our constitutional exclusionary doctrine '[t]he criminal is to go free because the constable has blundered.' People v. Defore, 242 NY [12], at 21, 150 NE [585], at 587 [(1926)]. In some cases this will undoubtedly be the result. But, as was said in Elkins [v. United States, 364 U.S. 206, 4 L.Ed.2d 1669 (1960)], '**there is another consideration--the imperative of judicial integrity**.' 364 US, at 222. [Emphasis added.] The criminal goes free, if he must,

> but it is the law that sets him free. **Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.** As Mr. Justice Brandeis, dissenting, said in Olmstead v United States, 277 US 438, 485, 72 L ed 944, 959 . . . (1928): '**Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. . . . IF THE GOVERNMENT BECOMES A LAWBREAKER; IT BREEDS CONTEMPT FOR LAW; IT INVITES EVERY MAN TO BECOME A LAW UNTO HIMSELF; IT INVITES ANARCHY.**'" Mapp v. Ohio, 367 U.S. 643, 659, 6 L.Ed.2d 1081, 1092 (1961). (Emphases added.)

This Court should clarify that the "objectively reasonable" test of Leon must apply in determining the existence of probable cause in the warrantless search scenario as at bar; else any ignorant police officer who does not "have a reasonable knowledge of what

the law prohibits" will obliterate the 4th Amendment rights of the citizens - as was done to defendant at bar.

Defendant stands convicted on the basis of evidence obtained in violation of his 4th and 14th Amendment rights, in that probable cause exists only when assessed from the subjective point of view of the arresting officer, which is objectively unreasonable.

Certiorari should therefore be allowed.

CONCLUSION

For the foregoing reasons, certiorari should be allowed; and, on the merits, defendant's conviction should be reversed, because it rests entirely upon evidence that was obtained in violation of his 4th and 14th Amendment rights.

Respectfully submitted,

FREDERICK F. COHN
DENNIS DOHERTY
Attorney for Petitioner

APPENDICES

APPENDIX A

FILED
Dec. 6 1994
Clerk of the
Appellate Court, 4th Dist.

No. 4-94-0401

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	) Appeal from) Circuit Court of) McLean County) No. 93CF540
v.	))
JEFFREY R. WUNDERLICH, Defendant-Appellant)	) Honorable) William T. Caisley,) Judge Presiding.

ORDER

In August 1992, the State charged defendant, Jeffrey R. Wunderlich, with felony driving while licensed *[sic.]* revoked (DWR) (a second DWR is a Class 4 felony if the original revocation was based upon a conviction for driving

under the influence of alcohol (DUI) (see Ill. Rev. Stat. 1991, ch. 95½, par. 11-501)) (Ill. Rev. Stat. 1991, ch. 95½, par. 6-303(d)). In October 1993, defendant filed a motion to quash arrest. In February 1994, the trial court conducted a hearing on that motion and denied it. The court later convicted defendant as charged at a bench trial and imposed an extended-term sentence of 5½ years in prison.

Defendant appeals, arguing that the trial court (1) erred in denying his motion to quash, and (2) imposed an excessive sentence.

We disagree and affirm.

I. BACKGROUND

Trooper Michael Dodge of the Illinois State Police testified at the

hearing on defendant's motion to quash that in August 1992, he was patrolling Interstate 55 near Bloomington when he came upon a vehicle, an older model, full-sized Chrysler, travelling in the same northbound lanes. After Dodge noticed a bandanna hanging from the car's rearview mirror, he pulled the car over. Defendant was the driver. Dodge saw the bandanna through the back window of the Chrysler, and he testified that "[t]he width of the bandanna did block some of the road." The bandanna hung three-fourths of the way down from the rearview mirror to the dashboard. Dodge further described the bandanna as "rolled in a fashion that you would wear on your head," with the ends tied together.

Defendant testified that he was able to see the road with the bandanna hanging from the rearview mirror. He claimed that his vision was not obstructed at any time as he drove.

Defendant cited section 12-503(c) of the Illinois Vehicle Code (Code) (Ill. Rev. Stat. 1991, ch. 95½ par. 12-503(c)) to the trial court, which provides that "[n]o person shall drive a motor vehicle with any objects placed or suspended between the driver and the front windshield *** which materially obstructs [his] view." Defendant maintained that because the bandanna did not materially obstruct the driver's view, Dodge did not have probable cause to stop defendant's vehicle. As a result, defendant argued that the

information Dodge learned as a result of that unlawful stop--namely, that defendant was driving with a revoked license--should be suppressed by the court.

The State responded that the issue was not whether the bandanna materially obstructed defendant's vision, but whether a reasonable person in Dodge's position would have reason to believe that the bandanna constituted a material obstruction. The trial court denied the motion, ruling that probable cause for making the traffic stop existed.

II. THE MOTION TO SUPPRESS

Defendant first argues that the trial court erred in denying his motion to quash because "there was no articulable reason to stop and arrest

[defendant] and the so[-]called violation of [section 12-503(c) of the Code] was a ruse and a sham." We disagree.

This court will not disturb the trial court's ruling on a motion to quash unless it is manifestly erroneous. (People v. Villarreal (1992), 152 Ill. 2d 368, 373, 604 N.E.2d 923, 925.) In People v. Sorrells (1991), 209 Ill. App. 3d 1064, 1069, 568 N.E.2d 497, 500, this court wrote the following:

> "[A]n objectively reasonable stop or other seizure is not invalid simply because the officer acted out of an improper or dual motivation. [Citations.] Whether a fourth amendment violation has occurred turns on an objective

> assessment of the officer's actions in light of the facts and circumstances confronting him at the time and not on the officer's actual state of mind at the time the challenged action was taken."

We explicitly reaffirmed this holding in People v. Salvator (1992), 238 Ill. App. 3d 824, 837, 602 N.E.2d 953, 961.

The record in this case fully justifies the trial court's finding that Dodge had probable cause for stopping defendant's vehicle. Defendant's argument sounds like an attack on the sufficiency of Dodge's testimony to sustain a conviction for a violation of section 12-5-3(c) of the Code. However, the issue before the trial court was not whether the State could prove beyond a

reasonable doubt that the bandanna materially obstructed defendant's vision as he drove, but instead whether Dodge had probable cause to believe that the bandanna he saw hanging from the rearview mirror in defendant's car constituted a violation of that section. The trial court believed he did, and we hold that its ruling was not manifestly erroneous.

We also note in passing that defendant never asserted in the trial court that Dodge's traffic stop "was a ruse and a sham." Having failed to assert that argument at the trial level, defendant has waived it on appeal. However, for the reasons expressed in Sorrells, had that argument not been waived, it would make no difference to

our resolution of this issue. See Sorrells, 209 Ill. App. 3d at 1069, 568 N.E.2d at 500.

III. DEFENDANT'S CLAIM THAT HIS SENTENCE IS EXCESSIVE

Defendant last argues that his sentence of 5½ years in prison for DWR is excessive. In making this argument, defendant does not challenge the trial court's determination that he was eligible for an extended-term sentence of three to six years in prison. See Ill. Rev. Stat. 1991, ch. 38, par. 1005-8-2(a)(6).

While at first blush this 5½-year sentence for DWR might seem unduly harsh, a review of defendant's record makes abundantly clear why the trial court imposed it. At the time of his sentencing, defendant was only 32 years

old, yet he had amassed the following record of convictions: 1979--three years in prison for robbery; 1980--three years in prison for burglary; 1983--seven days in jail for driving while license suspended (DWS); 1983--three days in jail for DWS; 1983--15 weekends in jail for DWS (later modified to 20 days of straight time and, after conditional discharge was revoked, an additional 30 days in jail); 1983--15 weekends in jail for DUI; 1983--one year's probation for DWS; 1984--seven days in jail for DWR; 1986--60 days of periodic imprisonment for criminal damage to property and trespass to residence; 1987--30 days of community service work for DWS; 1987--60 days periodic imprisonment for DWS; 1988--34

days in jail for DWS; 1990--one year of conditional discharge for battery; 1989 --four years in prison for aggravated battery; 1993--two years of conditional discharge and 360 days on electronic monitoring for both DUI and DWR.

Based upon this record, we hold that the trial court did not abuse its discretion in sentencing defendant to 5½ years in prison for his most recent DWR. See People v. Turner (1993), 156 Ill. 2d 354, 359, 620 N.E.2d 1030, 1032.

IV. CONCLUSION

For the reasons stated, we affirm the judgment and sentence of the trial court.

Affirmed.

STEIGMANN, J., with COOK and GREEN, JJ., concurring.

APPENDIX B

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT
SUPREME COURT BUILDING
SPRINGFIELD 62701-1792

CLERK OF THE COURT
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DATE: 02/02/1995

RE: People v. Wunderlich, Jeffrey R.
General No.: 4-94-0401
McLean 93CF540
Rule 23 filed 12/6/95
Judgment - Affirmed

TO COUNSEL:

The court today denied the petition for rehearing filed in the above entitled cause.

The mandate of this court will issue in 7 days to the Clerk of the Circuit Court unless an affidavit of intent to seek review in the Illinois Supreme Court (Rule 368(b)) is filed in this court.

{Signed}
DARRYL PRATSCHER, CLERK, Clerk
Appellate Court
Fourth District

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APPENDIX C

78749

ILLINOIS SUPREME COURT
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June 1, 1995

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No. 78749 - People State of Illinois, respondent, v. Jeffrey R. Wunderlich, petitioner. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 23, 1995.

Appendix D

[Ex. A to Motion to Suppress (R. 38)]